



## Youth Prisons: Abolition or Reform?

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### Abstract

Active and targeted reforms at the local and state levels have had success reducing youth incarceration rates. While most agree the work is not done, reform of the youth incarceration system has had important successes. At the same time, activists and advocates have increasingly rejected the goal of reforming youth prisons in favor of abolishing them. I outline some objections to prominent abolitionist arguments. Specifically, I show why arguments that focus on the racist historical origins of the incarceration system, structural injustices within that system, or the inefficiency or harms of the current system justify reform of youth imprisonment practices, not complete elimination of them. By advancing these critiques, I do not claim to show that the reformist perspective is superior to the abolitionist one. Instead, I aim to identify an argumentative burden that abolitionists must address if they are to give reformers good reason to become abolitionists.

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“We must therefore examine whether we should act in this way or not, as not only now but at all times I am the kind of man who listens to nothing within me but the argument that on reflection seems best to me.”

Socrates, Plato’s *Crito*

Some practices and institutions should be abolished, not reformed.

No, I’m not thinking of Zoom meetings or Minnesota winters (though I sympathize). Chattel slavery is an obvious example. Infamously, Whites in the antebellum American South falsely claimed enslaved Black Africans were inferior in order to treat them as mere things to be used.<sup>1</sup> No amount of reform can make this practice just. The only right thing to do was abolish chattel slavery.

When we look at the past, additional examples abound. Honor killing. Dueling to the death to resolve interpersonal conflicts. Internment camps for Japanese Americans during World War II. I suspect you’ll agree: simply reforming these practices wouldn’t do. We were right to completely abandon them.

Judging that an abandoned practice from the past should be abolished is often easy. Deciding whether we should abolish a practice we’re currently invested in is harder, but no less important.

Oddly, this became clear to me during a high-school home economics class. Instead of sewing ugly duffel bags or burning crepes, we were listening to my classmate Hillary give a presentation about vegetarian cooking. She frequently advocated for ethical vegetarianism, and I often responded with casually arrogant teenage scorn. I had always eaten meat, and she was telling me it was wrong? Ridiculous.

But this time was different. Her arguments, which she’d shared so often before, were finally sinking in. “We’ve always done it this way” was no justification for denying women the vote, so why was it any better an excuse for dietary choices that contributed to so much suffering and death? “It’s a natural human behavior” would condone all manner of immorality, such as lying, killing, and villainizing those who are different. “We need it to be healthy” is factually false. The best arguments, I decided, favored going vegetarian.

Since then, my philosophical training and teaching has afforded many opportunities to reflect on the arguments for and against eating meat. I still believe giving up meat (and, I’ve come to think, many other animal products) is right. Examining the arguments has also led me to a more radical conclusion: we should completely abolish various forms of animal agriculture in the United States, including the use of animals for meat. We should not be satisfied, I would argue, with more “humane” ways to raise and slaughter sentient animals for food. We should completely abandon the practice in favor of more compassionate and environmentally sustainable alternatives.

Perhaps you disagree. Nevertheless, I’m willing to bet you can think of *something* people still do that you think should be abolished. Sometimes, there’s good reason for people to abolish a practice that feels natural or normal. (Imagine if no Whites

ever questioned whether chattel slavery should be abolished. That would be a serious moral failure.) Critically examining an abolitionist challenge to a practice we're invested in takes courage. But Socrates was right. Being a good person requires taking these challenges seriously and going where the arguments lead us.

That's why I've been intrigued by activists' calls to abolish another institution: youth prisons. According to the Annie E. Casey Foundation (2021), active and targeted reforms at the local and state levels helped reduce the number of incarcerated youths by 70 percent between 1995 and 2019. This is an important success, even if the work is far from done. Activists and advocates, however, have increasingly rejected the goal of *reforming* youth prisons in favor of *abolishing* them.<sup>2</sup> Instead of being satisfied with identifying specific reforms to make the youth prison system more just and effective, activists argue that justice can only be achieved when youth incarceration is completely eliminated.

Should we aim to abolish youth prisons rather than reform them? This question is worth taking seriously. I was fortunate to be able to examine this question more carefully with members of the Legal Rights Center (LRC), a law firm that engages in the important work of advocating for incarcerated youth and their families. A former student of mine, Taiwana Shambley, organized several meetings in which we examined together arguments for and against youth prison abolition. I was excited and humbled by the opportunity to combine the tools of moral philosophy with their extensive expertise and experience with the youth criminal justice system.

Here, in the spirit of a Socratic search for truth, I share why I'm not yet convinced that abolishing youth prisons is preferable to reforming them. Specifically, I show why arguments that focus on the racist historical origins of the incarceration system, the structural injustices within that system, or the inefficiency and harmfulness of the current system justify reform of youth imprisonment practices, not complete elimination of them.

These are certainly not the only arguments for youth prison abolition. I have chosen to focus on them because they have been prominent in recent scholarship and activism.<sup>3</sup> By advancing these critiques, I do not claim to have shown that the reformist perspective is superior to the abolitionist one. My goal here is merely to explain why some prominent abolitionist arguments do not give reformers good reason to become abolitionists. My hope is that examining the shortcomings of these abolitionist arguments will help us determine if there are better ones.

## Defining "Abolition"

Before examining arguments about youth prison abolition, we need to clarify the difference between youth prison reform and youth prison abolition. As abolitionist legal scholar Dorothy Roberts notes, "it is hard to pin down what prison abolition means" (2019, 6) because activists and scholars have used widely varying descriptions of their aims.

For instance, abolitionists disagree about what needs to be abolished. Some critics of incarceration focus on eliminating specific mass incarceration policies (Alexander 2020), which does not necessarily imply abolition of the prison system as a whole (and which may not be regarded as an abolitionist position in the sense that is the focus of this paper). Some abolitionists argue that we should eliminate any practice that uses "a logic and method of dominance" (Roberts 2019, 19). Others suggest we should abolish the "prison industrial complex," which means "eliminating imprisonment, policing, and surveillance and creating lasting alternatives to punishment and imprisonment" (Critical Resistance n.d.; see also Davis 2011, 107).

Despite these broader disagreements, all advocates of youth prison abolition seem to agree on a few things. Abolishing youth prisons means completely eliminating criminal justice practices that imprison minors in facilities outside of their homes or communities. However, eliminating those facilities isn't all there is to abolition. Youth prison abolition also requires replacing prisons with more just and effective methods for promoting community safety, personal growth, and accountability. This may require change to many areas of our society (Davis 2011; Morris 2000). The process of elimination is incremental and not expected to take place all at once (Roberts 2019, 108; "Breaking Down the Walls" 2019). According to some abolitionists, pursuing abolition sometimes requires pursuing "non-reformist reforms": small changes that make the incarceration system less oppressive while showing that it inevitably creates problems and fails to achieve its goals (Roberts 2019, 114; Davis and Rodriguez 2000, 216).

This account of the basic abolitionist position leaves many things that abolitionists (advocates of youth prison abolition) and reformers (advocates of youth prison reform) can agree upon. Both reformers and abolitionists can agree that the current state of youth prisons is unjust and requires significant change. Both agree that having institutions and practices that fairly and effectively promote community safety, personal growth, and personal accountability is important.<sup>4</sup> Nevertheless, a crucial difference remains. Abolitionists believe that criminal justice practices that imprison minors in facilities outside of their homes or communities are never a legitimate means to those ends. Reformers, on the other hand, accept that such practices can (if carried out in the right ways and circumstances) be a legitimate way to tackle tough real-world social problems.<sup>5</sup>

## The Unjust-Origins Argument

The American prison system is embedded within political and social institutions plagued by racism. Prisons have functioned—and still do function—to disproportionately and unjustly exclude Black Americans and other people of color from economic opportunities and political participation. Prisons still cause harm and suffering that perpetuate intergenerational trauma. It is thus not surprising that many advocates of youth prison abolition, especially in the United States (Langer 2020), focus on racial injustice when making their case.

One prominent argument for youth prison abolition focuses on the origins of the prison system. Abolitionist legal scholar Dorothy Roberts argues that prison abolitionists, despite their diversity of views about the nature of and reasons for abolition, tend to agree that "today's carceral punishment system can be traced back to slavery and the racial capitalist regime it relied on and sustained" (2019, 7–8). Indeed, tracing the unjust origins of the contemporary prison system is often

portrayed by activists and scholars as an important part of the case for abolition.<sup>6</sup> According to Roberts, the unjust origins of the system provide reason to abolish it:

Prison abolitionists look back to history to trace the roots of today's carceral state to the racial order established by slavery and look forward to imagine a society without carceral punishment. Both are critical motivations for abolishing the prison industrial complex. The case for abolition that is grounded in history and politics provides a compelling framework for understanding the need to eradicate the entire carceral punishment system as well as for identifying strategies to accomplish that goal. (2019, 19)

One way to interpret this passage is as asserting that the fact that the institutions have unjust origins entails that those institutions should be abolished.

Call this the *Unjust-Origins Argument*. It justifies youth prison abolition with two crucial premises:

1. Practices begun as a result of injustice or for morally problematic motives should be abolished.
2. American youth prisons began as a result of injustice and for morally problematic motives.

So, American youth prisons should be abolished.

Abolitionists (for instance, in the Youth First Initiative's "[Jim Crow Juvenile Justice](#)" video) often focus mostly on explaining and defending premise 2 with historical evidence. The modern criminal justice system, including youth incarceration, has its origins in racial injustice. After the formal abolition of chattel slavery in the United States, states introduced laws that could be used to control newly freed African Americans. These laws, including the Mississippi Black Codes, were often written in racially neutral language but were unequally applied or focused on practices that would disproportionately target Black Americans with the sole remaining legal form of "involuntary servitude" allowed after the Thirteenth Amendment—imprisonment for crimes. Similar initiatives drove the so-called "War on Drugs" in the 1970s and '80s, in which harsh penalties for recreational drug use were used disproportionately to punish African Americans (even though recreational drug use was higher among White Americans). This history provides evidence that our contemporary youth criminal justice system has origins in racial injustice. Reformers thus have good reason to agree it shows premise 2 is true. The origins of the youth prison system in the United States are marked by significant and appalling racial injustice.

The trouble comes with premise 1 of the argument, which is often left implicit. An advocate of youth prison reform could accept premise 2 but object that the Unjust Origins Argument is unpersuasive because premise 1 is subject to counterexamples:

- *Public schools in Winchester, Massachusetts*, (like many schools and colleges) were started with sexist motives. They were founded with the express intention of giving boys an education that would lead to college and preparation for leadership in the public sphere while confining girls to helping professions (like teaching) or work in the home.<sup>7</sup> But several hundred years later these schools now offer the same quality education to both girls and boys. Premise 1 implausibly implies that these schools should be abolished simply because of their history.
- *Modern psychiatric hospitals* can be traced to asylums and "madhouses," such as the notorious Bethlem Royal Hospital (Bedlam). These institutions treated mentally ill patients horribly—chaining them to beds, charging the public fees to watch them as entertainment, confining them without recreation, stimulation, or opportunities for growth. Often, mental illness was viewed as evidence of moral or spiritual defects. In addition, early psychiatric institutions were often used as means to marginalize, silence, or discipline women for defying prevailing gender norms. A husband or family member could have a woman locked away for "hysteria" and subjected to ghastly "treatments," such as insulin shock therapy and confinement. Despite these unjust origins, we obviously should not abolish all modern psychiatric hospitals.
- *Modern gynecology* began with the problematic research of J. Marion Sims, who made many important discoveries (including techniques for repairing fistulas and a still-used speculum tool) by performing experiments on enslaved women. Today, there are still racial disparities in gynecology (as in other areas of medicine). Does this history justify abolishing gynecology or all current gynecological clinics? Clearly not. It would be very harmful (and gender oppressive) to get rid of gynecology or eliminate specific gynecological clinics merely due to their problematic origins. What we need to do is reform those institutions, not abolish them.

These examples illustrate that the first premise of the argument, as it is stated, is false: the unjust origins of an institution or practice do not by themselves show that it should be abolished. What matters is whether the institution or practice aims at important goals that could be pursued in just and fair ways. Since abolitionists and reformers agree that public safety and individual reform and accountability are legitimate goals (Bernstein 2014, 314–15), pointing out that youth imprisonment as originally applied was an unfair or ineffective means to these goals does not show that it cannot be reformed so that it is effective and fair. Merely pointing to the (very real and appallingly racist) unjust origins of the institution fails to give a reformer reason to embrace abolition.<sup>8</sup>

## Structural Injustice Arguments

Angela Y. Davis suggests a different argument for abolition, in which the unjust origins of prisons play a more indirect role:

What is the relationship between these historical expressions of racism [i.e. chattel slavery, lynching, and segregation] and the role of the prison system today? Exploring such connections may offer us a different perspective on the current state of the punishment industry. If we are already persuaded that racism should not be allowed to define the planet's future and if we can successfully argue that prisons are racist institutions, this may lead us to take seriously the prospect of declaring prisons obsolete. (2011, 25)

According to this view, the unjust origin of our prison system is not supposed to directly imply the need for abolition. Instead, the unjust origin of the institution just provides vivid evidence for the *current* injustice of the system, and the

current injustice justifies abolition.<sup>9</sup>

The Youth First Initiative straightforwardly applies this line of argument to youth prisons: youth prisons are racist institutions because they display unjust racial disparities between groups (see Youth First Initiative 2018). For example, according to recent data by the Sentencing Project, Black youth in my home state of Minnesota are 8.5 times more likely to be incarcerated than White youth.<sup>10</sup>

If we add the implicit premise that racist institutions should be abolished, we get the *Racist Institution Argument*:

1. Racist institutions should be abolished.
2. Youth prisons are racist institutions.

So, youth prisons should be abolished.

Abolitionists could offer various arguments for premise 2. They could argue that youth prisons are analogous to other obviously racist institutions.<sup>11</sup> Or, they could specify an account of structural racism and apply it to youth prisons.<sup>12</sup> Perhaps they could show that a commitment to white supremacy better explains our current prison practices than the laudable liberal values people assume make imprisonment justified.<sup>13</sup> I'm willing to bet one of these strategies (especially one of the first two) would work. The claim that current youth prisons are racist institutions is compelling.

Yet, problems remain for premise 1. Suppose there is a hospital that is the sole medical facility serving a community composed predominantly of people of color. In this hospital, racial bias causes physicians to systematically ignore the needs of Black and Indigenous patients. Insurance policies explicitly refuse to cover certain procedures for people of color that are covered for Whites. As a result, people of color tend to have significantly worse medical outcomes. The hospital and insurance institutions here are clearly racist. But surely that means we should reform the hospital, not abolish it. Since premise 1 implies otherwise, it must be false.<sup>14</sup>

Prison abolitionists reply by focusing on institutions that are *irreparably* racist. Davis asks: "Is racism so deeply entrenched in the institution of the prison that it is not possible to eliminate one without eliminating the other?" (2011, 26). Someone who thinks the answer is "yes" could give a revised version of the Racist Institution Argument:

1. All *irreparably* racist institutions should be abolished.
2. Youth prisons are *irreparably* racist.

So, youth prisons should be abolished.

The problem for this argument is that it is hard to find a sense of "irreparably racist" that makes both premises clearly true. "Irreparably racist" could mean that it is *difficult in practice* to eliminate all racism in the institution. If that's the idea, then premise 1 is overly broad. Racism may be a blight that democratic societies will always have to resist, but that doesn't show we should give up on democracy. Hospitals and schools might need to be ever vigilant against racist impulses, but this doesn't imply we should abandon those institutions as means for providing health care and education.

Premise 1 would be more plausible if "irreparably racist" meant that it's *conceptually impossible* to imagine that institution taking a form that is not racist.<sup>15</sup> We cannot reimagine racialized chattel slavery and Jim Crow segregation without the racism. This is good reason to abolish those practices. But surely we *can* imagine youth prisons that aren't racist. If that's so, then premise 2 is false.

As Judge Tanya Bransford notes in response to youth correctional facility closures in Minnesota, there are non-racist purposes incarceration can serve:

"Not everyone can be in the community," said Hennepin County District Judge Tanya Bransford. "People argue that we should just not have any children detained. That's not reality. If you have people charged with murder, they have to be detained." ... As much as she's worked to keep kids out of institutions, in some cases, there's no choice, she said. There are children who have been involved in shootings and pose a danger to others or would be in danger themselves if they returned home. There are kids who have sexually or physically abused a family member. There are kids who are homeless and have nowhere else to go to.

"There's a small subset of youth who need to be in an out-of-home placement for a limited time," Bransford said. "I'm concerned that they're going to wind up being sent out of state or other places that we don't have control over." (Nesterak et al. 2021)

In the hard cases Judge Bransford discusses, we can imagine youth prisons functioning as a means to promoting safety, growth, and accountability. And we can imagine those prisons doing so in a non-racist way. Just as the misuse and abuse of psychiatric care is not evidence that psychiatric institutions are irreparably sexist and ableist, the misuse and abuse of imprisonment is not evidence of the irreparable racism of youth prisons. Imagining non-racist prisons is not conceptually impossible.

The problem with the revised version of the Racist Institution Argument, then, is that it is hard to find a sense in which youth prisons are both irreparably racist *and*, in virtue of that, worthy of being abolished rather than reformed.

Like the Unjust Origins Argument, the Racist Institution Argument highlights real racial injustices that we ought to remember, critically reflect on, and address. My goal here has not been to deny that youth prisons have been (or still are) racist. Far from it—that injustice is very real. My point is that these injustices clearly justify significant reform of youth prisons, but they do not justify abolition.<sup>16</sup>

## Instrumental Failure Arguments

Abolitionists (especially those working directly to support incarcerated youth and their families) often offer a different argument for youth prison abolition. According to this argument, prisons should be abolished because they are instrumental failures: the prison system fails to achieve its own stated goals as well as abolitionist alternatives.<sup>17</sup>

Mariame Kaba gives a representative statement of this line of thought:

A world without harm isn't possible and isn't what an abolitionist vision purports to achieve. Rather, abolitionist politics and practice contend that disposing of people, by locking them away in jails and prisons, does nothing significant to prevent, reduce, or transform harm in the aggregate. It rarely, if ever, encourages people to take accountability for their actions. Instead, our adversarial court system discourages people from ever acknowledging, let alone taking responsibility, for the harm they have caused. At the same time, it allows us to avoid our own responsibilities to hold each other accountable, instead delegating it to a third party—one that has been built to hide away social and political failures. An abolitionist imagination takes us along a different path than if we try to simply replace the [prison industrial complex] with similar structures. (2020)

We could call this argument the *Less-Harmful Alternatives Argument*:

1. We should abolish a social practice if there's an alternative that achieves the same goals but results in less aggregate harm.
2. There are alternatives to youth prisons that achieve the same goals but result in less aggregate harm.

So, we should abolish youth prisons.

It's easy to see why premise 1 is appealing. The goal of teaching children to be responsible and ethical is important, but there are better and less harmful ways to achieve those goals than spanking kids. This is a good reason to abandon spanking as a parenting tool (Cullors 2018). The goal of preventing and addressing theft is important, but there are less harmful ways to achieve that goal than dismembering thieves. This is a good reason to abandon those mutilations.

To justify premise 2, abolitionists offer various types of evidence. For instance, they highlight:

- Incarceration is harmful. Incarceration can cause trauma and perpetuate social inequality and structural racism (Washington et al. 2021) and can make it hard to reintegrate into the community (Davis 2011).
- Incarceration is inefficient. Recidivism remains high even with increased imprisonment. Prison often fails to reform people (Morris 2000). Alternatives to prison (such as electronic monitoring) may reduce recidivism in some cases (Andersen and Telle 2022).
- Some alternatives to prison are successful. Restorative justice practices have sometimes helped address school behavioral problems without involving the criminal justice system (Friedman 2019). Many harmful behaviors could be avoided if people had better social supports, such as employment opportunities and health care (Davis 2011, chap. 6). If our society was not systematically unfair, harmful behavior would likely decrease.
- Identifying alternatives is challenging. Imagining alternatives to prison requires questioning assumptions about what is possible or inevitable (Davis 2011). This is hard, and we shouldn't expect to have all the details now. According to some abolitionists, we shouldn't even try to identify specific alternatives. If we do, they'll just be co-opted to build a new prison-like system (Mathiesen 1974).

Reformers could agree that premise 1 is plausible. But they could reasonably argue that the evidence provided for premise 2 is insufficient. Showing that premise 2 is true requires meeting a significant burden. The evidence typically offered is not up to that task.

To see why, consider medical licensing requirements. In the United States, you can't just put up a shingle and claim to be a physician. To legally practice medicine, you need to successfully complete approved education and training in medicine. You then must pass a board exam. These requirements are not just elitism in action. Having them helps prevent people from being harmed by backyard surgeons and other unqualified wannabes. It helps people stay healthier by showing them who they can trust.

Suppose someone claimed that we should abolish medical licensing requirements because (they say) there are alternatives that cause less aggregate harm. What kind of evidence would be required to back this up? Showing that there are times medical licensing requirements are applied in a harmful way isn't enough. Even if some locality has overly strict requirements for being a doctor, that doesn't mean we should start handing out prescription pads to anyone who wants them. Nor does it help to point to times medical licensing fails to protect people. Even if licensing doesn't prevent all malpractice, that doesn't mean we should let anyone who fancies themselves a surgeon whip out their scalpel. There may be other things that can prevent some harms from bad doctoring besides medical licensing requirements (public education, for instance). Still, that doesn't justify doing away with those licensing requirements. A hard-core critic of medical licensing might suggest that radical changes to our society might allow us to prevent harm to patients without requiring licenses to practice medicine. But without more specifics, we could be forgiven for being unmoved by their calls for abolition.

The lesson is this: it would be no small feat to justify the abolition of medical licensing requirements by showing that there are alternatives that would achieve the same legitimate goals with less harm. Making the case for abolition would require giving evidence that there is a way to arrange our society without *any* professional licensing that would likely achieve the same goals with less aggregate harm. It would not be enough to point to the harms of current licensing practices, the times those practices fail to achieve their goals, cases where alternatives are successful, or the utopian possibilities we can imagine.<sup>18</sup>

For similar reasons, the evidence typically offered by abolitionists does not give reformers reason to believe premise 2 of the Less-Harmful Alternatives Argument is true. Abolitionists and reformers can agree that we need a system for responding to the hard cases: serious harms, such as rape and sexual assault, homicide, mass shootings, aggravated assault, and racist vigilante violence (Langer 2020; Shelby 2016, 249). Reformers can point to various improvements to our youth prison systems that could address these social wrongs with less overall harm than our current system. Without evidence that

there's a specific and achievable social arrangement that would likely cause less overall harm than well-reformed youth prisons, reformers won't have reason to adopt the abolitionist cause.

Reformers offer a variety of proposals for how we could reduce the harms caused by youth prisons while still using them as a tool for responding to the hard cases. At Neustrelitz prison in Germany, for instance, incarcerated youth (more than half having committed violent crimes) are viewed as in need of treatment and support instead of retribution (Röder 2015). They receive therapy (including animal therapy where they can ride horses and care for rabbits), training in trades, and assistance in finding work and housing after release. Other German prisons, including those for adults, allow those incarcerated to wear their own clothes, work to save money for their release, have supervised and unsupervised family visits, and live in comfortable rooms; such institutions avoid the use of solitary confinement except in cases where necessary to prevent direct harm (Chammah 2015). By adapting models such as these, we can refocus youth prisons on treatment and rehabilitation while also containing the self-directed and other-directed violence that harms those youths and their communities. Reformers can agree with abolitionists that these efforts could be furthered by suitable reforms to other areas of society, such as more equitable access to health care, education, living wages, and childcare.

Is there an abolitionist alternative that is likely to produce less harm than this reformist vision? Reformers could reasonably find the evidence on offer insufficient. Pointing to the harms of the current prison system, the times it fails to achieve its goals, times when alternatives are successful, or the possibility of a radically different world is not enough to show that the complete elimination of youth prisons is preferable to suitably reformed youth prisons.<sup>19</sup>

My point needs emphasizing. Sometimes critics' use of examples of serious harms—rape, murder, mass shootings, child abuse, etc.—to question the abolitionist project can seem uncharitable. Amia Srinivasan notes this tendency in discussions of whether feminists should seek to address sexual violence with increased legal punishment:

But what about the rapists? The question is sometimes played as a trump card. But in fact it's a question about which abolitionist feminists have plenty to say. (2022, 177)

My point here is not simply to use examples of serious harms as a trump card against youth prison abolition, and I am not denying that abolitionists have had many things to say about them. I am not claiming that simply by pointing to those examples we have proven abolitionism false. My goal has been to use the example of medical licensing to show that the evidential burden for showing that a practice is more harmful and thus should be abolished (rather than reformed) is high. I have not tried to show it is impossible to meet that burden in the case of youth prisons, but merely that reformers can reasonably believe it has not yet been met.

## Conclusion: Continuing the Discussion

Despite these objections to common abolitionist arguments, advocates of reform and abolition have much they can agree upon. As it is currently practiced, youth incarceration is often implemented when it is not necessary and in ways that are ineffective, are needlessly harmful, and perpetuate oppression (Drinan 2017; Bernstein 2014, 308). Perhaps many of the changes necessary for making the youth correctional system more just can be carried out without agreeing on whether the long-term goal should be total abolition rather than significant reform.

My goal has been to critically examine three arguments prominent in recent abolitionist scholarship and activism. These are by no means the only arguments abolitionists have offered.<sup>20</sup> Their centrality in recent discussions, however, warrants giving them careful consideration. Do these arguments justify abolishing youth prisons rather than significantly reforming them?

I have argued in the negative: all three arguments fail to give reformers reason to become abolitionists. The Unjust Origins and Racist Institution Arguments cite real and pressing injustices. These injustices clearly justify reform of the youth prison system, but they do not justify abolition. The Less-Harmful Alternatives Argument holds more promise. Nevertheless, without further specification of the abolitionist alternative and evidence that alternative is likely to produce less overall harm than the most effective reforms, the argument gives reformers no reason to believe abolition—rather than significant reform—is a viable and desirable goal.

In response to the objections I have raised here, abolitionists have three main paths of response. First, they could try to show that my objections fail to undermine the Unjust Origins Argument, the Racist Institution Argument, or the Less-Harmful Alternatives Argument. Second, they could try to revise one of those arguments so that it avoids the problems I've raised. Third, they could refocus their efforts on developing and defending other lines of argument for abolition. I am most tempted by the thought that there is a relevant difference between children and adults that would justify abolishing youth prisons (Buss 2022). Yet I still find it challenging to overcome the objections I've outlined above. Perhaps abolitionists could try to identify clear cases of institutions that obviously should be abolished and some that obviously shouldn't, identify a principle that best explains these, and then show that this principle implies we should abolish youth prisons.<sup>21</sup> In her reply to this paper, Taiwana Shambley offers a version of the third response, and examining her argument will help us continue the discussion.

Determining whether abolitionism can be defended in one of these ways, or whether we have good reason instead to be content with (significant) reform, will require further discussion. My goal has been to help get that discussion started so that reformers and abolitionists alike can work together towards justice.

## Notes

<sup>1</sup> I'll follow Sally Haslanger (2012) in capitalizing all racial categories ("Black," "White," etc.) to mark that they are all social constructions.

<sup>2</sup> See, for instance, the Youth First Initiative's campaigns ("Breaking Down the Walls" 2019).

3. I will put aside here arguments that justify prison abolition with more radical arguments, such as that all legal punishment is unjust, that no one is ever morally responsible for their actions, or that all governments should be abolished. I do this for both a practical and a theoretical reason. The practical reason is that I'm interested in whether there are abolitionist arguments that could persuade reformers by drawing on their existing values. The theoretical reason is that I suspect that if youth prison abolition can be justified it won't take such a wholesale revision of our worldview. If someone thought we needed to deny free will and moral responsibility or become anarchists to justify abolishing Jim Crow segregation, I'd suspect they're looking in the wrong place for their argument. As far as I can tell, the same would be true of youth prison abolition.

4. For example, see Bernstein (2014, 314–15); Davis (2011, 113–14). It is true that abolitionists (Davis 2011, 114) often contrast what they see as the retributive mindset embodied in the prison system with reparative conceptions of justice that they advocate for. However, I think this doesn't undermine my claim that abolitionists and reformists can and do agree at some level on the general goals we should aim for.

5. Some who consider themselves penal abolitionists apparently do not think we should completely eliminate prisons, insisting instead that we should aim to drastically reduce the number of people incarcerated while acknowledging that there might be a relatively small number of cases in which incarceration is legitimate (Langer 2020). I am sympathetic to Maximo Langer's (2020, section II) point that this position is best described not as a penal abolitionist position but something else—Langer's "criminal law minimalism," or what I'm calling a reformist view. One reason those with reformist views about prisons might talk in abolitionist terms is to move the Overton window so that a reasonably reformed prison system is a viable political option.

6. See Alexander (2020), Davis (2011, 28–29), and the Youth First Initiative (2018). Similar points are sometimes made about policing. For example, see NAACP (n.d.) and Jabali (2020).

7. See the Winchester History Online (n.d.) and Knight (n.d.).

8. Whether and when pointing to the origins of a belief or practice is ever good reason to affirm or reject it is a matter of dispute among philosophers. See, for example, discussions of the so-called genetic fallacy and debunking arguments about topics like belief in gods (Boudry 2021), gender categories (Haslanger 1995), or the plausibility of specific moral outlooks or judgments (Singer 2005; Berker 2009) or objective moral facts (Tropman 2014).

9. Dorothy Roberts's account of the second and third components of abolitionism suggests this reading: "First, today's carceral punishment system can be traced back to slavery and the racial capitalist regime it relied on and sustained. Second, the expanding criminal punishment system functions to oppress black people and other politically marginalized groups in order to maintain a racial capitalist regime. Third, we can imagine and build a more human and democratic society that no longer relies on caging people to meet human needs and solve social problems" (2019, 7–8). See also Roberts (2019, 20, 71).

10. Statistics are drawn from Rovner (2021).

11. A prominent example is Alexander (2020). For a demonstration and practice of the skills required for analyzing and evaluating moral arguments from analogy, see Stoner and Swartwood (2021, chaps. 8–10).

12. For example, Haslanger (2016), MacKay and Sreenivasan (2021), Mills (2017), Soon (2021), and Young (2011).

13. I say "perhaps" because there is significant disagreement among philosophers about whether, when, and how pointing to the causes of a belief or practice implies the belief or practice is justified or unjustified (or right, wrong, good, bad, true, false, etc.). See n9.

14. Abolitionists could respond that they would support abolishing this specific instance of a hospital and then rebuilding a new hospital from scratch. If this is what abolishing hospitals means, then it would leave abolitionists unable to distinguish their position from the reformist positions they wish to criticize. I thank members of the Legal Rights Center for helpful discussion of this point.

15. I thank Ian Stoner for helpful discussion of the distinction I'm trying to draw here. For a potentially related distinction between primary and derivative injustice, see MacKay and Sreenivasan (2021, sec. 6.2).

16. A slightly different question is whether the racial injustice of our current system implies that Black offenders should have reduced sentences. If the criminal justice system is racially unjust, then we face a dilemma. On the one hand, punishing Black offenders seems unjustified because the injustice of the system makes state punishment illegitimate, especially punishment of those whom the system is likely to treat unfairly. On the other hand, if we fail to punish Black offenders, then this is likely to most negatively impact the already marginalized Black victims of the majority of those offenses. What is the best way to promote racial justice here, given that punishing and not punishing Black offenders seem to both perpetuate racial injustice? This is what Benjamin Yost has called "the decarceration dilemma" (2021, 219). Philosophers have offered a number of possible responses to this dilemma. See, for example, Duff (2001), Shelby (2016, chap. 8), Tadros (2009), and Yost (2021). My argument here does not weigh in on this issue, since taking the dilemma seriously is compatible with seeing prison reform (rather than abolition) as the long-term goal.

17. I'm grateful to Malaika Eban and Garrett Fitzgerald for discussion of this type of argument and for helping me appreciate its importance in the work of contemporary abolitionist activists. Although the Unjust Origins and Racist Institutions Arguments have been emphasized in many recent American scholarly and public discussions of penal abolition, instrumental failure arguments have historically been influential in America and abroad. See Langer (2020) and Morris (2000).

18. A similar point could be made using laws that formally prohibit discrimination on the basis of race and religion. To justify abolishing these laws on the basis that doing so would produce less overall harm, it would not be enough to point to ways business owners are harmed by these laws, to times these laws are misapplied, to some times alternative strategies reduce

discrimination, or to claim that the unfettered free market would (by some unspecified mechanism) reduce racial and religious discrimination while also avoiding attendant harms.

19. Bagaric, Hunter, and Svilar (2021) describe the lack of a specific alternative to prisons as the “fundamental shortcoming in the traditional abolitionist argument.”

20. Some philosophers have argued for the radical conclusion that all legal punishment is unjustified. If that argument is sound, then it implies that prisons, insofar as they are a form of legal punishment, should be abolished. For an example of an argument of this type, see Boonin (2008).

21. For demonstration of how to analyze, evaluate, and develop arguments of this type, see Stoner and Swartwood (2021, chaps. 11–13).

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## Post-Publication Note

Readers interested in additional philosophical exploration of the topic of prison abolition are encouraged to read *The Idea of Prison Abolition* by philosopher Tommie Shelby (Princeton University Press, 2022), an excellent book that came out while this essay was in production.

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## Review Statement

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**Malaika Eban** is the Interim Executive Director of the Legal Rights Center (Minneapolis, MN), focused on supporting our community's visions and organization's mission of transformation in the criminal legal system. Malaika joined the Legal Rights Center in 2019 as a social work intern. Her experience includes direct programming with youth and families, issue-based advocacy with community-based coalitions, racial equity facilitation, political campaign management, and nonprofit development. She is a Licensed Graduate Social Worker with dual masters degrees in public policy and social work from the University of Minnesota. Malaika's role includes overseeing the Legal Rights Center's community strategy, policy advocacy and organizing at the state and local level, community education, communications, and organizational partnerships.

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